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Attorney Docket No. 9372-5



PATENT

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Hernandez et al.

Confirmation No.: 3689

Serial No.: 10/802,388

Group Art Unit: 2644

Filed: March 17, 2004

For: SOUND CANCELING SYSTEMS AND METHODS

Date: June 18, 2004

Office of Patent Legal Administration
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO ACCORD THE PROPER FILING DATE

Sir:

As set forth in 37 CFR § 1.10(c) and MPEP § 506.02, Applicant hereby petitions to grant the proper filing date of March 17, 2004 rather than March 18, 2004 for the above-identified patent application as this was the date the application was deposited as "Express Mail" in the U.S. Postal Service. The following is enclosed as evidence of March 17, 2004 being the correct filing date for the application which was properly filed under 37 C.F.R. § 1.10:

1. A true and accurate copy of the Cover Sheet for the Application showing the Express Mail signature and date on Page 3;
2. A true and accurate copy of the Express Mail Receipt marked by the United States Postal Service ("USPS") as a "date-in" or deposit date with the USPS on March 17, 2004; and
3. A true and accurate copy of our return post card sent by the United States Patent and Trademark Office, showing that Applicant was improperly given the filing date of March 18, 2004 instead of the Express Mail date of March 17, 2004.

This petition is being filed promptly after Applicant became aware of the improperly accorded filing date. Accordingly, Applicant respectfully requests the granting of March 17, 2004 as the filing date pursuant to 37 CFR § 1.10.

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Page 2

On the basis that Applicant properly followed the requirements of 37 CFR § 1.10 and the USPTO failed to accord the proper filing date under MPEP § 505 and thus the need to file this petition is due to error on the part of the USPTO, it is applicant's belief that no fee is due with this petition. However, the Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No. 50-0220.

Respectfully submitted,

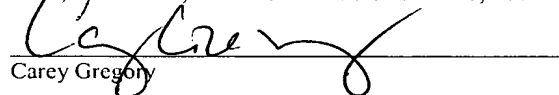


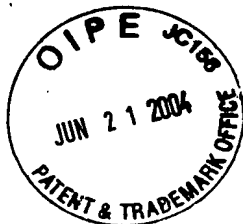
Laura M. Kelley
Attorney For Applicant
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USPTO Customer No. 20792
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Post Office Box 37428
Raleigh, North Carolina 27627
Telephone: 919/854-1400
Facsimile: 919/854-1401

Certificate of Mailing under 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on June 18, 2004.


Carey Gregory



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT

ATTY DOCKET NO.: 9372-5

DATE: March 17, 2004

**UTILITY PATENT APPLICATION TRANSMITTAL LETTER
AND FEE TRANSMITTAL FORM (37 CFR § 1.53(b))**

Mail Stop PATENT APPLICATION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith for filing under 37 CFR § 1.53(b) is:

- ☒ a patent application
☐ a Continuation ☐ a Divisional ☐ a Continuation-in-Part (CIP) Application of prior application no.: _____; filed _____, the disclosure of which is incorporated herein by reference in its entirety.
☒ and claims the benefit of Provisional Application Nos. 60/455,745 filed March 19, 2003 and 60/478,118 filed June 12, 2003.

Inventor(s) or Application Identifier:

Walter C. Hernandez, Potomac, Maryland
Mathieu Kemp, Durham, North Carolina
Frederick R. Vosburgh, Durham, North Carolina

Entitled: **SOUND CANCELING SYSTEMS AND METHODS**

Myers Bigel Sibley & Sajovec, P.A.
P. O. Box 37428
Raleigh, North Carolina 27627
Telephone: (919) 854-1400
Facsimile: (919) 854-1401
Customer No. 20792

Enclosed are:

1. ☒ Application Transmittal Letter and Fee Transmittal Form (*A duplicate is enclosed for fee processing*)
2. ☒ 26 pages of Specification (including 36 claims)
3. ☒ 7 sheets of Formal Drawings (35 USC 113)
4. ☐ Oath or Declaration
 - a. ☐ newly executed (*original or copy*)
 - b. ☐ copy from prior application (37 CFR 1.63(d) (*for continuation/divisional*) [Note Box 6 Below]
 - c. ☐ DELETION OF INVENTOR(S) (*Signed statement deleting inventor(s) named in the prior application*)
5. ☐ Application Data Sheet. See 37 CFR 1.76

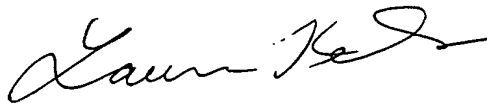
6. ☐ Incorporation By Reference (*useable if box 4b is checked*)
The entire disclosure of the prior application, from which a copy of the oath or declaration is supplied under Box 4b, is considered as being part of the disclosure of the accompanying application and is hereby incorporated by reference therein.
7. ☐ Microfiche Computer Program (*Appendix*)
8. ☐ Assignment papers (*cover sheet(s) and document(s)*)
9. ☒ Applicant claims small entity status. See 37 CFR § 1.27.
10. ☐ Information Disclosure Statement, PTO-1449, and _____ references cited
11. ☐ Preliminary Amendment (*Please enter all claim amendments prior to calculating the filing fee.*)
12. ☐ English Translation Document
13. ☐ Certified Copy of _____ Application No. _____ ; Filed
14. ☐ Sequence Listing/ Sequence Listing Diskette
- a. ☐ computer readable copy
- b. ☐ paper copy
- c. ☐ statement in support
15. ☐ An Associate Power of Attorney
16. ☒ Return Receipt Postcard (MPEP 503) (*Should be specifically itemized*)
17. ☐ Deletion of Inventor(s) (Signed statement attached deleting inventor(s) name in the prior application. See 37 CFR 1.63(d)(2) and 1.33(b).)
18. ☐ Nonpublication Request under 35 U.S.C. 122(b)(2)(B)(i). Applicant must attach form.
19. ☒ Other: Application filed under 37 CFR 1.41(c)

The fee has been calculated as shown below:

| | Column 1 No. Filed | Column 2 No. Extra | Small Entity Rate Fee | Large Entity Rate Fee |
|--|-----------------------|-----------------------|-------------------------------|-------------------------------|
| BASIC FEE | | | \$385.00 | \$ 770.00 |
| TOTAL CLAIMS | 36 - 20 = | 16 | x 09 = \$150.00 | x 18 = \$ |
| INDEP CLAIMS | 7 - 3 = | 4 | x 43 = \$172.00 | x 86 = \$ |
| <input type="checkbox"/> MULTIPLE Dependent Claims Presented | | | + 145 = \$ | + 290 = \$ |
| If the difference in Col. 1 is less than zero, Enter "0" in Col. 2 | | | Total \$707.00 | Total \$ |

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- ☐ A check in the amount of \$ _____ is enclosed to cover the filing fee, PLUS the Assignment Recordation fee (\$40.00).
- ☐ Please charge my Deposit Account No. 50-0220 in the amount of \$ _____
- ☐ The Commissioner is hereby authorized to credit overpayments or charge the following fees associated with this communication to Deposit Account No. 50-0220:
- a. ☐ Additional filing fees under 37 CFR 1.16 for presentation of extra claims.
- b. ☐ Additional patent application processing fees under 37 CFR 1.17.

Respectfully submitted,



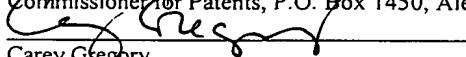
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Registration No. 48,441

CERTIFICATE OF EXPRESS MAILING

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M.S. Patent Application 2w61g

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Date: 3-17-04

Doc. No. 9375-5

Serial No. 73A

Inventor: Hernandez et al

Sir: 03-24-04 A09:11 IN

Kindly acknowledge receipt of the accompanying items listed below
by placing your receiving stamp hereon and return mailing:

☒ Application Transmittal and:

☒ Specification pages 24

☒ No. of Claims 36

☐ Declaration & POA

☐ Assignment and Fee

☐ Small Entity Statement

☒ Formal Drawings/ 7 sheets

☐ Associate Power of Attorney

☐ Exp. Mail ☐ 1st Class Mail

Other:

1.41(C)

☐ Check \$ _____
☐ IDS & PTO-1449 & _____ refs.
☐ Amendment & Amend. Transmittal
☐ Preliminary Amendment
☐ Issue Fee
☐ Brief
☐ Appeal
☐ Submittal of Priority Doc.

Application filed under 37 CFR

Respectfully submitted,
MYERS BIGEL SIBLEY & SAJOVEC, P.A.
Attorneys for Applicant

17497 U.S. PTO

10/802388



031804